

**To:** Schwab, Justin[schwab.justin@epa.gov]  
**Cc:** Bowman, Liz[Bowman.Liz@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Nalven, Heidi[Nalven.Heidi@epa.gov]  
**From:** Wehling, Carrie  
**Sent:** Tue 5/16/2017 1:31:38 AM  
**Subject:** Re: EPA and Pebble Limited Partnership Reach Settlement Agreement

That's correct. Under the NEPA regulations the permitting agency is responsible for the EIS; here that would be the Corps. But EPA publishes notice of it as a reviewing agency.

Sent from my iPhone

On May 15, 2017, at 8:22 PM, Schwab, Justin <[schwab.justin@epa.gov](mailto:schwab.justin@epa.gov)> wrote:

Copying Heidi, who may know as well.

Sent from my iPhone

On May 15, 2017, at 6:53 PM, Bowman, Liz <[Bowman.Liz@epa.gov](mailto:Bowman.Liz@epa.gov)> wrote:

Please let me know if the press release is inaccurate and if it requires an update/corrected version to go out.

**From:** Schwab, Justin  
**Sent:** Monday, May 15, 2017 6:52 PM  
**To:** Bowman, Liz <[Bowman.Liz@epa.gov](mailto:Bowman.Liz@epa.gov)>  
**Cc:** Neugeboren, Steven <[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>; Wehling, Carrie <[Wehling.Carrie@epa.gov](mailto:Wehling.Carrie@epa.gov)>  
**Subject:** Re: EPA and Pebble Limited Partnership Reach Settlement Agreement

Copying water law here - my understanding is that while EPA \*publishes notice of\* the FEIS, it is the Corps that \*writes\* it.

Steve,

Carrie,

Is that accurate?

Sent from my iPhone

On May 15, 2017, at 6:49 PM, Bowman, Liz <[Bowman.Liz@epa.gov](mailto: Bowman.Liz@epa.gov)> wrote:

Do you know understand the discrepancy he is referring to? I incorporated all the edits from our legal folks and DOJ, so if something is incorrect, it is news to me. The release is below; the third bullet says:

EPA agrees that it will not move to the next step in its CWA process, which would be to issue a recommended determination (determination steps are: proposed, recommended, final), until 48 months from settlement or until the U.S. Army Corps of Engineers issues its final environmental impact statement, whichever comes first. To take advantage of this period of forbearance, Pebble would have to file its permit application within 30 months.

<https://www.epa.gov/newsreleases/epa-and-pebble-limited-partnership-reach-settlement-agreement>

**From:** Juan Carlos Rodriguez [<mailto:jc.rodriguez@law360.com>]  
**Sent:** Monday, May 15, 2017 12:30 PM  
**To:** Press <[Press@epa.gov](mailto:Press@epa.gov)>  
**Subject:** Re: EPA and Pebble Limited Partnership Reach Settlement Agreement

Hi there. I just wanted to drop you all a note to very respectfully let you know that the information in this press release, and the statement that's up on the EPA site — specifically the third bullet point — seems to differ from what's in the agreement.

Here's what the settlement agreement says: "If PLP does not submit a CWA Section 404 Permit Application regarding the Pebble deposit to the U.S. Army Corps of Engineers within 30 months from the Effective Date of the Settlement Agreement, the Regional Administrator or his/her designee may, at any time thereafter, forward a signed Recommended Determination and administrative record to EPA Headquarters pursuant to 40 C.F.R. § 231.5(b).

If PLP submits such a Permit Application within 30 months from the Effective

Date of the Settlement Agreement, the Regional Administrator or his/her designee may not forward a signed Recommended Determination and administrative record to EPA Headquarters pursuant to 40 C.F.R. § 231.5(b) until EPA publishes a notice in the Federal Register of the final Environmental Impact Statement (EIS) regarding PLP's Permit Application pursuant to 40 C.F.R. § 1506.10(a) or 48 months from the Effective Date of the Settlement Agreement, whichever is earlier in time."

So as you can see, from this language, there's nothing tying an action to a Corps EIS, as the third bullet point in the release says.

I just wanted point this out, but I'm wrong here, please let me know, I just want to be sure.

Thanks.

On Fri, May 12, 2017 at 8:11 AM, Cathy Milbourn <[milbourn.cathy@epa.gov](mailto:milbourn.cathy@epa.gov)> wrote:

**CONTACT:**

[press@epa.gov](mailto:press@epa.gov)

**FOR IMMEDIATE RELEASE**

May 12, 2017

**EPA and Pebble Limited Partnership Reach  
Settlement Agreement**

*EPA Agrees to Allow Permit Process to Proceed; Pebble Agrees  
to Drop Lawsuits*

**WASHINGTON** --The U.S. Environmental Protection Agency entered into a settlement agreement with the Pebble Limited Partnership to resolve litigation from 2014 relating to EPA's prior work in the Bristol Bay watershed in Alaska. The settlement provides the Pebble Limited Partnership (Pebble) an opportunity to apply for a Clean Water Act (CWA) permit from the U.S. Army Corps of Engineers before EPA may move forward with its CWA process to specify limits on the disposal of certain material in connection with the potential "Pebble Mine."

"We are committed to due process and the rule of law, and regulations that are 'regular'," said EPA Administrator Scott Pruitt. "We understand how much the community cares about this issue, with passionate advocates on all sides. The agreement will not guarantee or prejudice a particular outcome, but will provide Pebble a fair process for their permit application and help steer EPA away from costly and time-consuming litigation. We are committed to listening to all voices as this process unfolds."

#### Key Terms of the Settlement:

- Pebble and the U.S. Department of Justice (on behalf of the EPA) will ask the U.S. District Court for the District of Alaska to dismiss the cases with prejudice and to lift the court-ordered preliminary injunction.
- EPA agrees to commence a process to propose to withdraw the currently pending proposed determination, consistent with its regulations.
- EPA agrees that it will not move to the next step in its CWA process, which would be to issue a recommended determination (determination steps are: proposed, recommended, final), until 48 months from settlement or until the U.S. Army Corps of Engineers issues its final environmental impact statement, whichever comes first. To take advantage of this period of forbearance, Pebble would have to file its permit application within 30 months.
- Pebble will drop its lawsuits and requests for fees against EPA, and agree to file no new Freedom of Information Act (FOIA) requests during the pendency of the "forbearance" period.
- EPA may use its scientific assessment regarding the Bristol Bay Watershed without limitation.

#### Background:

In 2014, under the previous administration, EPA's Region 10 completed a multi-year watershed assessment in Bristol Bay, and then issued a CWA Section 404(c) proposed determination, which described restrictions on large-scale mining in the watershed. Section 404 is the part of the CWA that governs the permit evaluation process for actions that discharge dredged or fill material into a covered water.

The May 11, 2017 settlement does not guarantee or prejudice any particular outcome to this process, but does ensure that the process will be carried out in a fair, transparent, deliberate, and regular way.

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Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460 United States

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Juan Carlos Rodriguez

Senior Environment Reporter

Legal News & Data

111 West 19th Street

5th Floor

New York, NY 10011

Office: [646-783-7197](#)

Cell: [505-353-2277](#)

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